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T H E S E C O N D E D I T I O N.

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T H E

C O N D U C T, &c.

A RUMOUR prevailed some time ago, that Parliament hastened to its dissolution. That rumour has since subsided. Whether it was originally founded, or what may actually be the truth, we cannot know, but this we may safely affirm, that let a dissolution be near or distant, it would be prudent in the people to prepare, it would be wise in them to provide for the event : thus, if immediate, it will not surprise them ; if remote, it will find them maturely determined.

But how ought they to prepare ? They ought to review the conduct of their representatives, they ought to examine if they be worthy of their trust, they ought to determine who are the friends, and who the enemies of the people.

B

It

It would be the interest of every man previous to a general election of representatives, to be perfectly master of this subject, as it is certainly his duty to make himself as thoroughly acquainted with it as lies in his power : for how can any one be qualified to chuse the guardians, till he knows the friends of his country ? It is not, however, easy for the bulk of the people to obtain this knowledge. The avocation of business denies them sufficient leisure to examine political questions ; and if they had leisure, these questions are so perverted by the prejudice, so disguised by the misrepresentation, and so deformed by the fury of party, that it would be difficult for them to discover the truth. He therefore would render his country a real service, who at such a moment should review the conduct of the Parliament, investigate the principles of every measure, and enable the people to form an adequate judgement of their representatives.

To review that conduct, to investigate these principles, and to enable the people to form that judgement, is the end of the present treatise. To promise we shall attain it, would be presumptuous ; but whether we succeed or fail, we shall endeavour to the best of our power.

The

The first measure which distinguished the Parliament of 1784, was

The WESTMINSTER SCRUTINY.

The circumstances of the case were as follows : the High Bailiff of Westminster was commanded by the precept of the Sheriff of Middlesex to return two members to Parliament against a certain day. When that day came, instead of obeying his precept, he informed the House of Commons, that his conscience hindered him from making a return, that he doubted the validity of many votes, and that he had instituted a scrutiny in order to examine them. The House of Commons ordered him to proceed with the scrutiny.

It is not easy to conceive how the House of Commons could take upon them to issue such an order. The House of Commons knew that the High Bailiff was obliged to make a return against the day fixed by his precept. They knew that this obligation was indispensable. They knew that after the day appointed for the return, the validity of all doubtful votes was to be tried by a Committee under Mr. Grenville's bill. They knew this to be the

law of the land; or did they pretend to alter the law of the land? Did they imagine that they could legislate at discretion? Did they suppose that the liberties of Great Britain had no other security than their will and pleasure?

It was affirmed that precedents could be produced to sanction this injustice. In the first place, precedents when opposed to principles, have little weight; and to suppose, that one branch of the legislature could suspend the operation of the laws, and overturn what the whole three had established, was a solecism in politics. But waving the absurdity of this supposition, no such precedent could be found, nor has been discovered till this day.

Analogy of law was next adduced to justify the scrutiny. But here the cause appeared equally hopeless. It was stated, that in the courts of law, when a sheriff has arrested goods for debt in virtue of a writ, and has not been able to sell them by the day on which his writ is returnable, the Court grants him a new one. The fallacy of the analogy was too gross to deceive the meanest capacity—an analogy equally lame in letter and in spirit. In the
courts

courts of law, a new writ was created, not an old one prolonged. In the courts of law, the same authority that gave the first writ, granted the second. Was this the case in the Westminster scrutiny? Did the House of Commons originate the writ to the High Bailiff of Westminster? No; it was the Court of Chancery—it was the law of the land—it was King, Lords, and Commons; and the High Bailiff should have petitioned King, Lords, and Commons, to establish his court of scrutiny, for the Commons alone had it not in their power.

Can we then doubt that in the case of the Westminster scrutiny, the House of Commons created a judge, and established a court of their own authority? Can we hesitate to declare that in so doing they broke the law of the land, and openly invaded the constitution? If we could, the conduct of Ministers (for the High Bailiff was only a tool in the hands of Ministers) would suffice to determine us. After exerting every spring of the prerogative to support the scrutiny, they were compelled to abandon it, and the individual * oppressed recovered damages in a court of law, to compensate the injustice which he had suffered.

* Mr. Fox.

The infallible consequence of the principle here established by the House of Commons is, that when the King calls a Parliament for the dispatch of public affairs, a considerable part of the nation may be unrepresented, and matters of the greatest moment may be determined without their concurrence. The returning officers of many cities and boroughs may, like the High Bailiff of Westminster, institute a scrutiny, defer a return, and suspend representation; so pernicious is this precedent in its consequences. Why then was it established? Why was the constitution invaded? Mr. Fox was the enemy of Mr. Pitt, and he was to be persecuted.—The Westminster scrutiny was the most convenient mode of persecution, and it was adopted. The liberties of Great Britain were sacrificed at the altar of personal enmity.

The people of England will determine whether they will allow the House of Commons to suspend the laws: they have already driven a monarch * from the throne for attempting to exercise that power, and there seems to be no reason why one branch of the legislature should possess it more than another. The rules of Roman jurisprudence, it is true, permitted the

* James the Second.

emperors to supersede the operation of the laws. The monarchs of Asia govern on similar principles. The conduct of the House of Commons in the Westminster scrutiny is sanctioned by their example : sanctioned however as it is by so respectable authorities, it will seem strange to Englishmen, that any power in the kingdom should be acknowledged superior to the laws, or should be able to rob the subject of their protection ; the bare idea strikes us with horror, and we should struggle to hinder it from being erected among us. We should mark the representatives who abetted the Minister in the Westminster scrutiny ; we should distinguish the friends who betrayed us ; we should remember with sentiments of eternal gratitude the generous benefactors who laboured so strenuously to annihilate our rights and to rob us of our representation !

The I N D I A B I L L.

The iniquity of our governors in India had risen to an enormous height : their cruelty, their oppression, and their rapacity, were become intolerable, and called for a system of government which should relieve the natives of India. It was necessary for the legislature of England to interpose ; it was necessary for the
Parlia-

Parliament to resume the power which had been abused, and to subject it to new regulations. Upon this ground Mr. Fox introduced his India Bill.

Mr. Fox's bill suspended the powers of the Company for the term of four years, and gave them, during that period, to seven Commissioners named by Parliament, to be exercised in trust for the Company; it appointed nine assistant Directors, subordinate to the Commissioners, and also named by Parliament.

The fate of Mr. Fox's bill is sufficiently known. A violent cry was raised against it, because *it overturned the charter of the Company, and conferred a degree of patronage on the Minister, which no man in this country ought to possess*. These topics filled the country with clamour, and the senate with declamation: notwithstanding all this, the bill passed the Commons triumphantly, and only stopped in the House of Lords, because it met an influence too sacred to be interposed, and too powerful to be overcome; it was accordingly rejected, and another India Bill was presented in its room.

The world naturally expected, that the new bill would avoid the guilt of its predecessor ; that it would shun the evils which had been reprobated ; that it would preserve a charter which had been declared so sacred, and refuse a patronage which had been pronounced so formidable. Let us see how their expectations were answered.

Mr. Pitt's Bill established a BOARD of CONTROUL, a SECRET COMMITTEE, and a COURT of DIRECTORS.

The BOARD of CONTROUL superintended the departments of Revenue, of Treaty, of Peace and War ; it possessed the power of recalling the servants of the Company, appointed by the Court of Directors ; of revising dispatches sent out by the Court of Directors ; and if it interfered in commerce, it was liable to an appeal by the Court of Directors to the King in council.

The SECRET COMMITTEE was chosen by the Court of Directors from their own body, still continued a part of that body, and was subject to the Board of Controul. It received the orders of the Board, and transmitted them to the servants of the Company in India ; and

as the secret Committee was bound to obey the Board of Controul, so were the servants of the Company bound to obey the secret Committee. This Committee took an oath of fidelity to the interests of the Company, and of secrecy to the Board of Controul.

The COURT of DIRECTORS superintended the Commerce of the Company.

Such was the power destined to govern India, and from the nature of its constitution, the whole patronage of the Company, attached to the Board of Controul. No other consequence could be expected, and no other consequence has followed.

The Court of Directors appointed a gentleman * Governor of Fort St. George. The Board of Controul objected to the appointment. The Court of Directors insisted. The Board of Controul yielded, but assured the gentleman, that he would be recalled, the moment he arrived in India. He accordingly refused to sail, and the Directors then appointed the person † recommended by the Board of Controul.

* Mr. Holland.

† Sir Archibald Campbell.

The President of Fort St. George allowed a certain gratuity to a servant* of the Company. The Court of Directors condemned his liberality, and in their dispatch censured his conduct.

The Board of Controul altered that dispatch, and applauded what he had done. The Court of Directors remonstrated; they represented that the situation of their affairs obliged them to adhere to œconomy, and complained that the Board of Controul assumed a power over their purse, which was never intended to be given by the Act. The Board replied, that the gratuity was to be paid out of the revenues of India, and consequently was included in their department. The Directors were compelled to acquiesce, and they applauded the conduct of their President.

These are a few selected from many instances. They prove incontestably, that the Charter of the Company was as little respected by Mr. Pitt, as by Mr. Fox's bill, and that an equal degree of patronage was conferred by it. But these were no objections. It was absolutely necessary to assume power, power could not be assumed

* Sir John Dalling.

without annulling the Charter of the Company, and wherever power went, patronage followed. To say then that the Charter of the Company was annulled, or that patronage was conferred, was only to say that measures were taken to restrain the enormities of India. This was no accusation against the Bill. It only proved the hypocrisy of its authors, in reprobating the means of accomplishing acknowledged purposes, which means were indispensably necessary to effect them, and which means they themselves, though indirectly, were afterwards compelled to adopt.

The real objections to Mr. Pitt's bill, and which constituted the difference between his and Mr. Fox's, were of another kind. They were not that Mr. Pitt's recalled a trust which had been abused, or that it did not prevent inevitable consequences; they were not that it gave power, but that it gave too much power, that that power was secretly exercised, and that its excesses were not liable to be punished. But the difference between the bills will appear better, on a nearer inspection.

Mr. Fox's bill was an experiment of four years.

Mr.

Mr. Pitt's bill was a perpetual law.

Mr. Fox's bill did not separate the political, from the commercial interests of the Company.

Mr. Pitt's bill divided the political and commercial interests of the Company. But the political and commercial interests of the Company were inseparably involved, for the surplus of their revenues formed the fund from which they were to discharge their debts.* The event has demonstrated it; wherever the Court of Directors has complained, that the Board of Controul meddled in commercial, the Board of Controul has constantly proved, that they interfered in political subjects. Mr. Pitt's bill, then, by dividing departments which could not be separated, created rights which must be confounded.

Mr. Fox's bill invested his Commissioners with no new powers. They had not even all those, which the Directors possessed formerly. No acts enabling his Majesty to interfere in the government of India, were repealed. The

* As appears by a statement delivered in the House of Commons.

Commissioners had no imperial prerogatives. They could not contract alliances, they could not make peace and war. They were obliged to communicate all dispatches to his Majesty, and to obey his instructions, nor could they employ the credit of the Company, without his Majesty's consent. They were removable by address from either House of Parliament. They formed not a fourth estate in the Constitution.

Mr. Pitt's bill gave his Commissioners extravagant powers ; power far exceeding those possessed by the Directors formerly. The Board of Controul was invested with “ the superintendence and controul over all the British territorial possessions in the East Indies, and over the affairs of the United Company of Merchants trading thereto.” All acts which gave his Majesty any right to interfere in the government of India, were expressly repealed by the bill, so that the Board was not obliged to consult his Majesty, nor abide by his pleasure in any thing relative to that country. It possessed imperial prerogatives. It could contract alliances ; it could make peace and war. It was in reality a fourth estate in the Constitution.

Mr.

Mr. Fox's bill established no despotic authorities abroad. It placed the whole powers taken from the Company in the Government at home, in order that the exercise of them might be subject to the controul of the legislature, and open to the animadversion of the public. It did not imprison a citizen wantonly ; it did not rob him of his rights ; it did not abolish juries.

Mr. Pitt's bill, aided by the act of 1786, gave to the governors and presidents abroad the most despotic authorities. They might seize a British subject at their pleasure, throw him on shipboard, or detain him in a dungeon, till “ a convenient opportunity of sending him to “ England ” offered ; and when he arrived in England, a new tribunal was erected for his trial. In vain he implored for a jury. The bill extended its wings equally over Asia and Europe ; and wherever it met the British subject, it robbed him of his rights, and deprived him of the blessings of the constitution.

Mr. Fox's bill suffered no concealment. The conduct of his commissioners was open to the observation of the world. The bill enacted that their opinions should “ be given in no covert “ manner ; ” they were obliged to declare their motives,

motives, to sign their declarations, and to record them upon their journals. They were thereby rendered completely responsible, for the motives of the measures were declared at the time that the measures were adopted.

Mr. Pitt's bill established a system of concealment. The secret Committee took an oath of secrecy to the Board of Controul, from which the Board alone could absolve them. Through the channel of the secret Committee, then, the Board of Controul might exercise the enormous powers which they possessed without fear of discovery. The Board issued its orders to the Committee, the Committee to the servants of the Company in India, and the servants of the Company obeyed them, all in the profoundest silence. The mystery of the procedure resembled more the tyranny of Venice, than the freedom of the English government.

Mr. Fox's bill provided redress against his Commissioners, in case they transgressed their authorities. They were obliged to lay a state of the affairs of India before Parliament annually, and if they were convicted of abuse, Parliament had the power to censure, to remove, or to punish them.

Mr.

Mr. Pitt's bill provided no redress against the Board of Controul in case they abused their authorities. The Directors, it is true, possessed a right of appeal to his Majesty in Council ; but an appeal *from* the Board of Controul *to* the Board of Controul, acting in the capacity of Ministers, was nugatory. The Board of Controul have already interfered in commerce. In 1786 the secret Committee ordered a purchase of cotton to be made, and the Board of Controul approved of their conduct. The Board of Controul moreover have been engaged in constant contention with the Directors ; the Directors maintaining that they transgressed, and the Board that they did not transgress their authorities. But have the wrongs of the Directors been redressed ? or rather, how is it possible that they should obtain any remedy ? Is it to be supposed that the Board of Controul sitting at the council table, will condemn their own conduct ? What retribution can be expected, where the criminals are the judges ?

Mr. Fox's bill promised to attain its object. It fixed the great power at home ; it suffered it not to roam into Asia. It struck at the very root of the evil. It destroyed the cause of the calamities in India.

Mr. Pitt's bill was not contrived to attain its object. The source of the crimes committed in India was not that those who went out were more wicked than those who remained at home, but that the temptation to guilt was stronger; and while the temptation to guilt was stronger, the chance of impunity was greater, from the power of our governors in India; a power so excessive, that they treated the orders sent from this country with derision and contempt. How then was the evil to be remedied? By striking at its root; by fixing the power at home; by chaining it down to England, where the same temptation to delinquency did not exist, and where the same hopes of impunity could not be entertained. Was this done by Mr. Pitt's bill? No—it gave new authorities to the governors; it swelled the source of the calamity; it fought the cause of iniquity by increasing the chance of impunity.

Such were the two bills; and on a candid review of them, it appears that both created patronage, and both annulled the charter of the Company: and therefore say some men, both were equally bad—No—both were equally good, equally effective, as far as that went. It was impossible to leave power in the hands of the
Com-

Company, without leaving abuses ; and it was impossible to resume it, without annulling their charter. Nor was it any objection against the bills, that the commissioners of both interfered in commerce ; that interference was inevitable ; the political and commercial interests of the Company were inseparably interwoven. Was there, then, no difference between them ? Did not Mr. Pitt's confer imperial prerogatives ? Did not Mr. Pitt's give power without responsibility ? Could not the Board of Controul procure the appointment of a commander in chief in India ? (and they have already done as much*) Could they not raise armies, apply revenues ? Might not that officer lose the whole territory by his misconduct, and yet they be irresponsible, because they did not appoint ? Was not the power of our governors abroad, the source of all their disorders ? and yet, are they not left in a situation to commit fresh enormities ?

To conclude. The two bills equally created patronage, equally annulled the charter of the Company. The difference was, that Mr. Fox's was manifest and avowed ; Mr. Pitt's, mysterious and concealed—that Mr. Fox's was agree-

* They occasioned the appointment of Lord Cornwallis and Sir Archibald Campbell.

able to the principles of our government ; Mr. Pitt's, hostile to the spirit of the constitution—that Mr. Fox's made his commissioners answer for every thing that they did ; Mr. Pitt's, for nothing that they do—that Mr. Fox's promised to end the calamities of India ; Mr. Pitt's has left them where he found them.

The COMMUTATION ACT.

The professed object of the Commutation Act was to put an end to Smuggling. The Minister complained that the evil was now risen to such an alarming height, as to threaten the total destruction of the revenue arising from tea. He proposed therefore to take so much from the duties upon that article as would defeat the smuggler, and lay it upon windows. The duties upon tea produced £.900,000 per annum ; he reduced them to what he calculated would give £.200,000, and proposed to draw the remaining £.700,000 from an additional tax upon windows.

The first light in which the Commutation act strikes us, is that of a bargain between the state and the individual : “ If you will pay me for
“ windows, you shall not pay me for tea.” And
in

in the light of a bargain it was a fraud. The subject was not obliged to drink tea, but he was obliged to have windows. An optional thing was changed for a compulsory one. A tax upon a luxury which none need have, was exchanged for a tax upon a necessary, which all must have. Was this a fair commutation ?* The salt tax in France has often been quoted as tyrannical, because the subject is compelled to pay the duty, whether he consume the commodity or not. But mild, indeed, is the spirit of the French, compared with that of the English tax. Few can dispense with salt, but many with tea ; when all therefore pay for the latter, many more must suffer injustice.

Considered then as a bargain, the Commutation tax was a fraud ; considered as a duty, it militated against every principle of taxation. The first maxim in finance is, *that every individual should contribute to the expences of government according to his ability*, and his ability depends upon his property. Property ought then to regulate taxation, and it is the only criterion by which we can determine the mildness or se-

* In consequence of it, many farmers who had never tasted tea, were now obliged to pay for their windows.

verity, the equity or partiality of any tax.* The principle however was here reversed. The tax was transferred from a luxury to a necessary; from the rich to the poor; from those who could best, to those who could least contribute to the expences of government.

Another maxim in taxation is, *never to transfer a duty from articles of general consumption to the fixed property of the country*, because the duty so transferred will always be oppressive, and before it can be equivalent, must be ruinous. The malt tax, for instance, produces as much as an additional tax of nine shillings in the pound upon land, would do. The malt tax however is hardly felt, and an addition of nine shillings in the pound upon land, would operate as an intolerable burthen. But the window duty itself is the best illustration of the principle. So great has been the severity of that tax, and such the efforts to evade it, that there is a deficiency of more than one million upon its produce.

* Doctor Smith lays down this doctrine in his *Wealth of Nations*, and it is remarkable that he gives *windows* as an instance how a tax may be oppressive. “A house,” says he, “of ten pound rent in a country town, may frequently have more windows than a house of five hundred pounds rent in London.”

The

The tea duty has given £.300,000 more than was expected, and yet the joint fund of tea and windows, or the whole revenue under the Commutation Act, is £.700,000 in arrears.

Nor was the oppression which the tax occasioned, the sole evil which flowed from it. By the general use of tea, the consumption of malt was materially injured, and the consumption of malt is an object of the first importance to this kingdom. When we reflect upon the number of taxes which it pays, and the beneficial consequences which it produces among the people, we must acknowledge it to be the principal branch of our finance, and the prosperity of its trade to be the political health of the country.

But the most serious objection against the Commutation Act was the consequences which ensued in India. Tea was purchased with silver, and the trade was ruinous. It employed no manufacturers in this country, which it would have done, had we purchased that article with our own commodities. Ruinous however as it was, when once begun, it was necessarily extended. To disable the smuggler from underselling the legal trader, the prices
were

were originally reduced, and to continue them low, it was necessary to maintain such a constant supply of tea in the kingdom, as to prevent them from being advanced by speculation among the dealers. For this purpose, Ministers proposed, that the India Company should employ a great capital, and fit out a considerable number of ships annually, in order to import the necessary quantity of tea. When the duties however were taken off here, the fine teas (for they occasioned all the mischief) became as cheap in England, as the coarse had been formerly : they were equally demanded, and equally to be purchased, but they cost double or treble the price in China, double or treble the quantity of silver was necessary to buy them, and consequently the balance of trade was turned two or three times more against England. The plan was so ruinous that it could not be executed, and Ministers themselves abandoned the attempt. For the two last years, they have sent out an inferior number of ships. Impossible, however, as the complete execution of the plan was, it could be pursued far enough to do much mischief, and much mischief has been done.

But

But is smuggling the evil, to remedy which such exertions have been made, totally destroyed?

If the duties had been lowered on the coarse teas only, the end would have been answered, because it was in these kinds that the smuggler chiefly dealt. And if they had been lowered in a less degree, no bad consequence could have followed in India. They would have been demanded less, and could have been supplied easily; as they cost little in China. The fine would have hardly been demanded at all. But the duties were thrown off all indiscriminately, all are demanded indiscriminately, all must be purchased indiscriminately, and by reason of the fine which cost so much, the quantities of all will fail indiscriminately. As the supply fails, the prices will rise; they have already risen far above the commuting ones, and smuggling has only been prevented hitherto, because the Company at the passing of the act bought up all the spare tea imported into Europe, to answer the immediate demand. But this security will soon vanish. Foreign nations* will be again sup-

* The Portuguese, Danes, and Swedes, import seven and a half per cent. cheaper than we do.

plied, the Company will import for themselves, and smuggling will prevail as formerly.

The Commutation act, then, was a measure treacherous, cruel, ruinous, and inefficient. Treacherous, because it made a fraudulent exchange; cruel, because it oppressed the poor; ruinous, because it drained the wealth of the nation, and inefficient, because it missed its object.

THE IRISH PROPOSITIONS.

The intent of the Irish Propositions was to extend still farther to Ireland, the advantages of a free trade, and to put her upon a perfect equality with Great Britain. Ireland had already established her independence. At the same time that we had conferred upon her the blessings of liberty, we had opened to her the commerce of the world. We had only reserved to ourselves, the exclusive privilege of supplying our own markets with our own colonies.*

* The monopoly claimed by the East India Company, it is true, was also reserved, but in this the inhabitants of Ireland did not differ from the inhabitants of Great Britain, over whom also the East India Company hold exclusive privileges.

These

These colonies were acquired with our treasure, and purchased with our blood. We protected them, and bound ourselves to receive their commodities ; they gave us their allegiance, and their trade in return. The terms of the connection were founded in justice, and sanctified by the usage of every nation, ancient and modern. Founded however as they were in justice, and entitled as we were to exclusive benefits, because subjected to exclusive burthens, we had relinquished such exclusion, willing to communicate our advantages with Ireland. We had admitted her to the trade of our colonies, and had desired her to carry her produce where she pleased ; we had encouraged her to rival us in foreign markets, and had intreated her to contend with us every where but in England. We had conferred all we could bestow, and had only retained what we could not relinquish without ruin,

In such a situation of things, what title had Ireland to expect new concessions ? What reason could there be for extending our generosity farther ? What pretence could be alledged for lavishing grants which might involve pernicious, far less, fatal consequences to this country ?

That the propositions which were framed by Ministers in England, which were dispatched to Ireland, and which returned here as the deliberations of her Parliament, did actually contain such consequences, cannot now be disputed. The form in which we find them, after having been altered by the legislature of Great Britain, demonstrates it. Their errors appear in their amendment ; their guilt in their reformation.

Let us contemplate for a moment, the consequences of the old propositions.

We should have lost the monopoly of the Indian trade, and should have been deprived forever of the power of renewing the East India Company's charter. Ireland was allowed to import *all* articles of foreign growth, produce, or manufacture, under the same duties as Great Britain, which duties were to be drawn back on exportation to this country. Ireland might therefore have brought Indian goods into the port of London, on the same terms as the East India Company, have destroyed their monopoly, and rendered it impossible for us to renew their charter. An exception was therefore made in the third new proposition, “ of the growth, produce, or
“ ma-

“ manufacture of any of the countries beyond
 “ the Cape of Good Hope to the Streights of
 “ Magellan.”

We should have hazarded the whole revenue arising from spirituous liquors. No precaution whatever was taken to prohibit the importation of foreign spirits into this kingdom, and all duties paid upon importation into either country were drawn back indiscriminately upon exportation to the other, till the same new propositions excepted those “ on arrack and foreign
 “ brandy, and on rum, and on all sorts of strong
 “ waters, not imported from the British colonies in the West Indies.”

Our navigation laws would have been surrendered to Ireland. To prevent it the fourth new proposition resolved, “ that all laws which have
 “ been made, or shall be made in Great Britain,
 “ for securing exclusive privileges to the ships
 “ and mariners of Great Britain and Ireland, and
 “ the British colonies and plantations, and for
 “ regulating and restraining the trade of the
 “ British colonies and plantations, such laws
 “ imposing the same restraints, and conferring
 “ the same benefits on the subjects of both kingdoms, should be in force in Ireland, by laws
 “ to

“ to be passed by the Parliament of that king-
 “ dom, for the same time, and in the same
 “ manner, as in Great Britain.”*

*We should have opened the door to a more ex-
 tensive contraband trade than has ever existed in
 this country.* So says the sixth new proposition.

“ That in order to prevent illicit practices, in-
 “ jurious to the revenues and commerce of both
 “ kingdoms, it is expedient that all goods, whe-
 “ ther the growth, produce, or manufacture of
 “ Great Britain or Ireland, or of any other
 “ country, which shall hereafter be imported
 “ into Great Britain from Ireland, or into Ire-
 “ land from Great Britain, should be put, by
 “ laws to be passed in the Parliaments of the
 “ two kingdoms, under the same regulations
 “ with respect to bonds, cockets, and other
 “ instruments, to which the like goods are
 “ now subject, in passing from one port of
 “ Great Britain to another.”

*We should have endangered the loss of the colo-
 nial market to the manufacturers of Great Bri-
 tain.* Ireland might have granted bounties, and

* The independence of Ireland was sacrificed by this proposition, which bound her to receive whatever laws we enacted relative to navigation.

under-

underfold us in the market of our colonies, if we may trust the testimony of the eighth new proposition : “ That it is essential for carrying
 “ into effect the present settlement, that all
 “ goods exported from Ireland to the British
 “ colonies in the West Indies, or in America,
 “ or to the British settlements on the coast of
 “ Africa, should from time to time be made
 “ liable to such duties and drawbacks, and put
 “ under such regulations as may be necessary,
 “ in order that the same may not be exported
 “ with less incumbrance of duties or imposi-
 “ tions, than the like goods shall be burdened
 “ with, when exported from Great Britain.”

We should have equally hazarded the loss of the home market to our colonies. It is universally known, that the produce of foreign colonies is cheaper than that of the British. Not a single provision, however, was stipulated for laying *permanent*, instead of *annual* high duties on the importation of foreign colonial produce into Ireland. If Ireland then had taken off her annual high duties, she would have admitted the produce of foreign colonies on such terms as would have effectually ruined our West-India islands. We appeal to the evidence of the fifth new proposition—“ That it is farther essential
 “ to

“ to this settlement, that all goods and com-
 “ modities of the growth, produce, or manu-
 “ facture, of the British or foreign colonies in
 “ America and the West Indies, and the British
 “ or foreign settlements on the coast of Africa;
 “ imported into Ireland, should on importation
 “ be subject to the same duties and regulations
 “ as the like goods shall be subject to on im-
 “ portation into Great Britain ; or if prohibited
 “ to be imported into Great Britain, shall be
 “ prohibited in like manner from being im-
 “ ported into Ireland.”

Ireland would have been enabled to draw a
revenue from our consumption. The fifth old
 proposition stated, that where either Great Bri-
 tain or Ireland should lay an internal duty on
 any manufacture or material, that manufacture
 coming from the other kingdom should be
 charged with a farther duty on importation ad-
 equate to the internal one ; and this farther
 duty was to continue so long only as the in-
 ternal duty, to balance which it was imposed ;
 or “ until the manufacture coming from the other
 “ kingdom shall be subjected there to an equal
 “ burthen not drawn back, or compensated on
 “ exportation.” What had Ireland to do, but
 to subject her manufacture to an equal burden ;

to impose an internal duty adequate to a corresponding one on the same manufacture in this country? We the consumers should have paid her duty, and she would have paid none in our ports. She would have drawn a revenue from our consumption. The above words are accordingly omitted in the new propositions.

The three last propositions protect the literary property of Booksellers, guard the rights of Patentees, and adjust the claim of the two nations to fish upon the coasts of the British dominions.

Such were the old, and such the new propositions. When we consider the last, we are almost compelled to confess them perfect from the multitude of errors corrected. Strong, however, as this argument may be, it is not conclusive. It is little to say, that the new propositions were not so bad as the old. Commerce continued exposed to innumerable dangers. The number of petitions from the manufacturers in this country had not decreased, and the independence of Ireland was sacrificed.* These

* By the third new proposition, we had surrendered our navigation laws, and in our hurry to recover them we overturned the independence of Ireland.

were incurable defects. They did not, however, intimidate our rulers. They pushed on with the same impetuosity as ever ; bore the new propositions triumphantly through the Houses, and then dispatched them to Ireland : but Ireland refused to accept them ; she considered them as an insult, and rejected them solemnly by the voice of her Parliament.

We cannot survey the catastrophe of this political drama without a smile. Folly renders guilt ridiculous. Laughter almost overcomes indignation. A measure is brought forward for the express purpose of uniting two nations, and it separates them. We sacrifice our dearest interests to Ireland, and our sacrifices only exasperate her. The effusions of our generosity are repelled as the artifices of treachery ; and the surrender of our rights is resented as an attack upon her liberty !

On the other hand, we cannot reflect without indignation, that if the old propositions had passed into a law, (and they were within four and twenty hours of passing) our commerce would have been irretrievably ruined, and the prosperity of a great nation sacrificed to the presumption of an individual. If the consequences

quences of the propositions were so fatal, why were not these consequences foreseen? Why were we conducted to the very brink of the precipice? Because our guides were blind, because they were obstinate, because they were arrogant. Do we not remember how they raged at the very name of investigation? Like the Popes of old, they darted their thunders against all who denied their infallibility. To examine was irreverent; to inquire, impious. But there were souls in the House of Commons who were not to be intimidated, who asserted the rights of reason against the claims of superstition. They were resolved to examine, they were determined to discuss: they did examine, and they did discuss. The efforts of their patriotism rescued half the empire from destruction, and the indignation of Ireland saved the rest.

The SHOP TAX.

We remember the reluctance with which the Shop Tax was received by the people. Nor did the odium, which it first excited, abate with time. Contrary to the example of their duties, that odium increased, and it was hated in proportion as it was known, till the torrent of de-

testation became irresistible and bore down all before it.

It is impossible to account for the excessive hatred of the shop tax, without resorting to its principles. It consulted not the ability of the individual, to contribute to the expences of government. It reversed the rules of taxation; it fell not upon property; it fell upon a debt.

The rent of a shop is a deduction to be made from the profits of the trader, or a debt which he is tempted to incur, by the prospect of future gain. And if the rent of the shop which he uses, is to be considered as a deduction, that of the house which he is compelled to take along with it, and from which he derives no advantage, is certainly more so. Yet did this duty begin upon shops, rise in proportion to the rent of the house, and then attach in that proportion upon the united rents of both shop and house.* It was levied upon loss, not upon

* When the rent of the house is five pounds, the shop is rated at four-pence for every such pound. The assessment gradually increases. When the rent paid for the house is thirty pounds, the shop is assessed at two shillings for every pound, and so forth to any amount.

profit ; it fell upon debt, not upon property, and it rose with the inability, not the ability to pay !

The advocates of the shop tax pretended, that the opulence of traders rendered them a fit object of taxation. If they really entertained such an opinion, they must have formed it from the ostentation with which shopkeepers display their commodities to public view, and from the profusion which appears in their windows. But this is a false criterion to judge by. The splendor of a shop is oftener an artifice to acquire wealth, than a demonstration of what is got, and is sometimes an effort to conceal real poverty.

Another circumstance contributed to increase the detestation of the shop tax. It opposed the citizen to the persecution of Revenue Officers, a set of men who have been odious from the earliest times. The Act was loosely worded ; the description of a shopkeeper was vague and undetermined. It was in the power of any surveyor to seek a manufacturer in his retreat, to drag him before Commissioners, and to compel him to declare, *whether* he had ever sold goods to the consumer, for that was the test by which they

they tried him, not whether he had opened a shop for the purposes of trade.

But waving the principle of the tax, or the mode in which it was levied, it induced consequences of a fatal tendency in a commercial country. It diminished the gains, and aggravated the losses of the shopkeeper. It anticipated the misfortunes of trade, and struck at the very vitals of speculation. When the mariner could hardly muster resolution to embark in the ocean of commerce, it displayed fresh dangers to his view; it shewed him new rocks where he might split, fresh gulphs where he might founder.

The operation of the shop tax was as blind as it was cruel. It fell sometimes upon the trader, and sometimes upon the consumer, always upon the former when he was the least able to bear it. The indigent dealer was compelled to levy the tax upon the consumer, while the wealthy one could afford to spare it, from the abundance of his profits. Thus were the poor first underfold, and finally ruined by the rich. It is to be feared that many families, who had struggled hard to earn their subsistence, before the imposition of this tax, were overwhelmed
by

by it. But their sufferings were not known, they expired in silence.

It has been pretended that the shop tax was no grievance. If so, why did Ministers propose to modify it? It was to alleviate an oppression, which did not exist. But it was a grievance; it was so flagrant a grievance, that no hireling of administration has ever ventured to defend it;* it was so odious a grievance, that a late Candidate † for Westminster carried his election for no other reason, but because he and his friends swore eternal enmity to the tax; it was so cruel a grievance, that in 1788, one hundred gentlemen, the majority of them appointed Commissioners to put the Act in execution, presented a remonstrance to the House of Commons, vehemently demanding a repeal of it, and solemnly protesting that it was so oppres-

* No pamphlet was ever written in defence of the shop tax.

† Lord John Townsend. Lord Hood who opposed him, had a considerable majority on the poll, till Lord John and his friends, signed an engagement binding themselves never to support any administration which should countenance the shop tax, upon which Lord John gained ground daily, and finally carried the election.

five in its operation, so opposite to the principles which it professed, and repugnant to the dictates of humanity, that they could not consistently with their oaths, they could neither as Christians, as citizens, nor as men, put it in execution.

If any thing were wanting to prove the oppression of the shop tax that tax is now repealed, Ministers were forced to succumb under the sense of the people. It never produced above £.56,000, and it will only be remembered as a proof how oppressive a tax may be without being productive.

The COMMERCIAL TREATY.

This treaty was not the first of its kind. Treaties of Commerce with France had existed before, but they had been attended with unhappy consequences. As precedents, they rather deterred than invited; they were rather to be avoided, than followed.

Whether there are not countries in the world so situated, that their union can never be effected at all, or if it be effected, can never produce any permanent benefit to either, is a point which
will

will still be disputed. It was affirmed, that to suppose any two nations doomed to eternal enmity was a libel upon political societies, that it presumed a degree of malevolence not to be imputed to humanity, and that nations might live in peace and union, in amity and concord. The idea of such a golden age was agreeable; it was a pleasing picture to contemplate, but it seemed rather sketched with the pencil of fancy, than built upon the base of philosophy, and it resembled more the dream of a poet, than the plan of a statesman. Notwithstanding all that has been said, or ever can be said, the experience of the world will shew, that there are states doomed to be enemies, because they are destined to be rivals; nations whose situation has sown the seeds of eternal discord, because it has sown those of eternal emulation. Such were Rome and Carthage, such were Athens and Lacedæmon, and such are France and England.

And if England stood in such a relation to France, to attempt an union of the countries, was to struggle against the laws of nature. It was to throw a bridge over the Hellespont, to join Persia and Greece.

Nor did this treaty seem more eligible in a commercial, than in a political point of view. Nature seemed to have denied us that equality, which we laboured to obtain by negotiation. She had blessed France with such fertility of soil, such variety of production, and such strength of population, as promised her an ascendancy in commerce. The experience of our ancestors admonished us to beware of a commercial intercourse with France, for England had never prospered, while she traded with that kingdom. When the commerce with France was opened under Charles the Second, the balance became one million against us, and the rents of land fell. Our ports were shut, and our trade revived. They were again opened under James the Second, and the same consequences returned, till they were shut a second time under William, and our trade again recovered itself. Such was the constant fluctuation of our commerce, flourishing or decaying, drooping or reviving, as we opened and shut our ports to France.

But the testimony of experience was rejected. It was affirmed by the advocates of the treaty, that the situation of things was changed, and that our manufacturers arrived at maturity, would assert a superiority over those of France.

If

If we really possess this superiority, we cannot flatter ourselves that it will be of long duration. The communication with France being opened, the facility of seducing our artizans is increased, and the prospect of our remaining pre-eminent in any branch, consequently diminished. But we are exposed to other dangers. The manufacturers examined at the bar of the House of Lords in 1785, declared that Ireland might soon acquire a superiority over Great Britain, from the easy terms of her labour, her living, and her taxation. Can it then be doubted, that France will acquire a much greater superiority, who possesses every one of these advantages in a double degree, and superadded to them the benefit of population.

Allowing however that we preserved the superiority we now boast, and that we drew an annual balance, of what consequence would be our profit? If the nations be natural rivals, (and that they are cannot be disputed, for they have almost always been at war) that profit cannot be permanent. Ruptures will frequently happen, the bonds of national faith will be dissolved, and all debts will be extinguished, notwithstanding the provisions of the treaty. For though it is there stipulated, that in case of a rupture, the

subjects of each kingdom shall have a twelve-month allowed them, to collect their debts and to remove ; yet this liberty is allowed on condition of their good behaviour, and that is but a slender security under an arbitrary government,* especially if we reflect, that that very government has frequently violated its faith to its own subjects, on the pressure of public emergency. † By such an extinction of debt, France could not possibly suffer, because the shortness of her capital incapacitates her from affording any length of credit, while the consequences would be serious to England, whose funds and liberality in trade are unbounded.

But we shall suppose these apprehensions to be groundless, and that our commercial advantages were decided and permanent. Shall we not suffer more essentially in other respects ? Will not an intercourse with France corrupt us ? Will not her luxuries enervate us ? Will not her manners debauch us ? Shall we not for-

* This was written before the commotions in France arrived at such a pitch. What will be the event of them, we cannot say, but we must talk of the government as it has been, till another is substituted in its room.

† It has been a constant practice in France to debase the coin, in order to supply the exigencies of the state.

get

get our doctrines, our principles, our prejudices, and with our prejudices shall we not lose the virtues of our ancestors ? If we do, if our vigour shall be enervated, if our manners shall be corrupted, if the character of an Englishman shall become extinct, will any commercial advantages indemnify us ?

The IMPEACHMENT of Mr. HASTINGS.

The impeachment of Mr. Hastings may perhaps seem a matter of small importance, because it was the accusation of an individual. But let it be remembered that the crimes which gave rise to it, extended their influence over a whole continent.

No subject ever occasioned a greater division of sentiments, than the character of Mr. Hastings. One half of mankind consider him as a persecuted hero, and the other, as a criminal brought to condign punishment. This extraordinary difference of opinion excites our curiosity, and we are eager to inquire what actions those can be which admit of such different constructions.

Though

Though the charges against Mr. Hastings contain much extraneous matter, the question of his delinquency is generally confined within a very narrow compass. In almost every charge, it turns upon a single point.

The charge of the Rohilla war was negatived.

The second was that of Benares. It was carried on the ground, that though Cheyt Syng was liable as a vassal of the East India Company to advance an aid or subsidy when required, yet he ought not to have been so heavily fined for his disobedience. There was, it was said, no proportion between the crime and the punishment.

The next charge related to the Princesses of Oude. Mr. Hastings was accused of having plundered them of their treasures. The reason assigned was, that they were in actual rebellion against the English government at the time, but the assertion was unsupported by any proof, the defence rejected, and the charge carried.

The next charge was that of Faruckabad. It accused Mr. Hastings of having violated a treaty,
and

and tyrannized over a Nabob. The plea of expedience was urged but over-ruled, and the charge voted.

The next related to contracts. Mr. Hastings was accused of wanton profusion in having given extravagant terms. It was carried.

The next to presents. It charged Mr. Hastings with having taken presents in direct defiance of an Act of Parliament. It was urged in his defence, that these presents were received for the benefit, and applied to the use of the Company. This application however was not proved, and the charge was carried.

The last charge concerned the revenues. It accused Mr. Hastings of having capriciously and arbitrarily changed the mode of collecting them seven or eight different times, to the great prejudice of the Company. An attempt was made to defend the regulations which he introduced, but in vain, and this charge was carried also.

On reviewing the charges, it appears that Mr. Hastings was guilty of many of the crimes of which he was accused, but that his motives were generally disinterested, and that he considered

ed the aggrandizement of the Company more than his own emolument. The rule however is not without exception, nor if it were, would it yield him any excuse. There are certain actions which ought never to be committed, whatever be their motives, and when they are committed, they should be punished for the benefit of society. And if such actions cannot be justified by any motives which gave rise to them, much less can their guilt be destroyed by the merit of any which may be opposed to them. By saving the life of one person, a man does not acquire a right to murder another. The idea of a set-off, or a balance of merits and demerits, was accordingly reprobated.

But though the motives which actuated Mr. Hastings, cannot justify his conduct, they account very well for the extreme difference of opinion that prevails respecting his character. His tyranny, his cruelty, and his corruption on the one hand, stigmatize him as a criminal, while on the other, the splendour of his services exalts him to the rank of a hero.

We now come to a character of another kind. Respecting Sir Elijah Impey, there was no difference of opinion, no division of sentiments.

The

The public agreed in their ideas of his conduct, and they expected firmly that he would be impeached. In this expectation, however, they were disappointed.

Sir Elijah Impey had been Chief Justice of the Supreme Court of Judicature in Bengal. He was charged with the legal murder of Mahah Rajah Nundcomar, an Indian Bramin.

Nundcomar suffered for forgery. He had committed the crime for which he was tried, three years before, and subsequent to that period, he had been upon the most amicable terms with Mr. Hastings, who had conferred upon his son an office of emolument and trust. They however came to differ, and then it was that Nundcomar accused Mr. Hastings of peculation. A prosecution for forgery was instantly raised against Nundcomar, and he was tried, condemned, and executed. As Sir Elijah Impey was the confidant of Mr. Hastings, as the latter communicated to him whatever passed in council contrary to the obligation of his oath, and as Sir Elijah was held by all India to be his creature, it was universally believed that Nundcomar had been sacrificed, and that the accuser of Mr. Hastings had been at once removed and punished.

nished. This belief, however, was founded in suspicion, and though the prosecution might have originated in sinister motives, the trial might have been conducted with the strictest impartiality and justice. Whether it was so conducted is the very point to be examined, and in examining it, we ought to lose sight entirely of Sir Elijah Impey's connection with Mr. Hastings; we ought to consider simply, whether he discharged his duty as a judge. If he discharged that duty faithfully, we should acquit him; if he deviated from it, we should condemn him; and if he acted as no other judge would have done, we have a farther right to compare his conduct with the circumstances of the case, and to ascribe it to extraordinary, to sinister, and to corrupt motives.

Mahah Rajah Nundcomar was tried, condemned, and executed upon the statute of 2d Geo. II. rendering forgery a capital felony in England.

We shall not inquire whether India was a conquered country, nor examine what right Great Britain had to legislate for Indostan. We shall take up the question where Sir Elijah Impey

pey found it, and only inquire how far that right had been exercised.

In the year 1726 George the First granted a charter to the East-India Company, giving them jurisdiction over all the inhabitants within ten miles of Calcutta. At that time their possessions extended three miles along, and one in breadth from the river Ganges.

In 1753 George the Second granted them another charter, in which the grant of jurisdiction was copied verbatim from the former. It stated, “ that the President and Council shall
 “ form a court of oyer and terminer, and that
 “ they shall proceed in the same manner as
 “ commissioners of oyer and terminer in Eng-
 “ land, *as nearly as the circumstances and condi-*
 “ *tion of the place and inhabitants will allow.*”

In 1753 an act of Parliament passed confirming the above charter.

In 1758 a regulation was made, to distinguish the different jurisdictions applicable to Europeans and natives, and to prescribe rules for trying the former by English laws, *the latter by the laws of their own country.*

In 1762 the President and Council of Calcutta published a proclamation, giving themselves jurisdiction over the natives, and began to exercise that authority accordingly, which they had never yet ventured to do, because they had not been sufficiently powerful to make any encroachments.

In 1773 a regulating act was made, which established a court of judicature at Calcutta, independent of the East India Company, with a jurisdiction strictly limited “ to British subjects resident in India, to such natives as are in the service of the Company, or of Europeans, and to such other natives only, as shall in writing have agreed to submit to the decision of the Supreme Court.”

In 1774 George the Third granted a charter giving the same powers of jurisdiction to the Supreme Court of Calcutta as had before been given to the President and Council of that place by the charter of 1753.

In this situation things stood when Nundcomar was tried. The first question which arose respected the jurisdiction of the court. By the regulating act of 1773, that jurisdiction was limited

limited to British subjects, to natives in the service of Europeans, and to natives submitting to it by agreement ; within none of which descriptions Nundcomar came : but these words could not apply to the inhabitants of Calcutta, or of a circle ten miles round it, otherwise the act must have contradicted the charter of 1774, which it accompanied and authorized ; for that charter gave the same jurisdiction to the Supreme Court, as the charter of 1753 gave to the President and Council.* As an inhabitant of Calcutta, therefore, Nundcomar was within the jurisdiction of the court.

The next question was of a very different nature indeed, viz. Whether the statute of Geo. II. against forgery extended to India ?

It is a principle of the English law, that no statute extends to a distant country, unless that extension be specified in the act.† Agreeable to the principle, the statute of Geo. II. extended not to Scotland, to America, nor to the West Indies ; much less could it extend to India.

* See the Charter of 1753.

† Vide Blackstone.

And if it did not extend to India by its own operation, it must have been carried over by the operation of some other statute. We can, however, find no such authority. The regulating act is so cautious of interfering with the laws of India, that it exempts its inhabitants, with a few exceptions, from the jurisdiction of the Supreme Court.

But it may be argued, that this statute extended by the charter of 1753, which conferred a criminal jurisdiction on the President and Council of Calcutta, and was confirmed by an act of Parliament. As the statute was not specified in the charter, it must have extended by implication. The infallible consequence of this supposition is, that our own criminal jurisprudence was transported in a body to India; that all our penal laws, however sanguinary, obsolete, or local, were carried over to that country; and that Sir Elijah Impey could have hanged an Indian bramin for bigamy: an idea, as the Directors very properly observe in their remonstrance, too absurd to be entertained for a moment; an idea diametrically opposite to the intention of the legislature, which on every occasion testified the most anxious solicitude to preserve the laws of India; and directly contrary
to

to the express words of the charter itself, which gave the jurisdiction to be exercised “ *as nearly as the circumstance and condition of the place and inhabitants will allow.*”

The statute, then, of Geo. II. against forgery extended to India in no one way whatever. Sir Robert Chambers, one of the judges, accordingly contended that the indictment, because laid upon that statute, was illegal ; nor was Sir Robert Chambers singular in his opinion. Sir William Jones, who succeeded Sir Elijah Impey in his office, constantly directed the grand jury to indict for forgery *as a misdemeanour only*.

But let Sir Elijah Impey be met upon his own ground. He affirms, “ *that the merits of*
“ *the question turn upon the point of native in-*
“ *habitaney—that he was fully justified by the*
“ *regulating act, and by the Charter of 1774,*
“ *to try Nundcomar by the English laws, and*
“ *that the charter in question gave the same cri-*
“ *iminal powers to the Supreme Court, as had*
“ *before been granted to the Presidency and Council*
“ *by the charter of Geo. II. in 1753.*”

How far he was justified by the act of 1773, appears by his own words. In his answer to the

the address of the Hindoos upon the execution of Nundcomar he tells them, that that act “ *makes no alteration in your religion, laws, or usages, or in those of the natives of this country; it leaves them in every respect the same as they were when the new law took place.*” If it did, forgery was not capital by the laws of India. Sir Elijah must then fly for refuge to the charter, and there he meets the words “ *as nearly as the circumstance and condition of the place and inhabitants will allow.*”

Let us now refer to auxiliary circumstances : Whether the statute of Geo. II. extended to India, was a question of the very first magnitude, involving at once the merits of the cause, the life of the pannel, and the ends of public justice ; yet would not Sir Elijah Impey suffer it to be discussed a moment. Notwithstanding the doubts of Sir Robert Chambers, he ordered the trial to proceed.

Mr. Farrer,* in his evidence delivered in to the House of Commons, complained that Sir Elijah Impey examined the witnesses for the pannel with much more severity than he did

* Counsel for Nundcomar in India,

those for the prosecution. He detained one of them seven hours under examination. The reason which Sir Elijah assigned for this conduct was, “ *that the counsel for the prosecution proved* “ *incompetent to the task, and that he had con-* “ *ducted the examination in order to further the* “ *ends of justice.*”

Nundcomar was condemned on the evidence of Caumel Odein: this man had declared that he never spoke truth, where his interest was concerned, except when upon oath. Sir Elijah Impey knew his incredibility, yet he suffered the jury to retire, without admonishing them against his testimony.

Mr. Farrer moved an arrest of judgement, upon the ground that the record, and the instrument charged to be forged, varied; that is, that the writing produced was not the same as was laid in the indictment and specified in the act; that it was neither a bond, a writing obligatory, nor a promissory note; that it was not a bond, because it was neither sealed nor delivered; that it did not bear the most distant resemblance to a promissory note; that the statute of 2 Geo. II. did not extend, in England, to exchequer and bank bonds and bills, &c. as was

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proved

proved by a new statute, 7 Geo. II. being expressly enacted for the purpose of including them; that exchequer and bank bonds and bills nevertheless resemble bonds or writings obligatory much more than the instrument in question; if the statute, therefore, could not reach them, much less could it the present writing. The motion, however, was rejected, Sir Elijah Impey declaring, that “*it is unnecessary to determine, whether it is either a bond or a promissory note; I am of opinion that it is the one or the other.*”

Mr. Farrer presented a petition of appeal; that was denied; he then applied for a respite. The doubts which had arisen in point of law, the doubts which had arisen in point of fact, the cruelty of transferring laws, whose justice was only local, to another country, the high rank of the condemned, every consideration seemed to plead for mercy. All the lawyers in the House of Commons to a man declared, that, in the situation of Sir Elijah Impey, they would have respited: that application was also refused, and Mr. Farrer was severely reprimanded by Sir Elijah Impey in open court, for having made it. He told him, that no counsel in England would have been guilty of the like

conduct ; and he testified particular displeasure at an expression used in the petition, and applied to Nundcomar, viz. “ unhappy victim.” The inhabitants of Calcutta and the Subah of Bengal joined in soliciting a respite, but in vain. Sir Elijah Impey was inexorable, and while he almost resented applications for mercy as an affront, he received addresses to hasten the execution with complacency.

Lastly, Let us mark the artifices which Sir Elijah employed for his defence. He affirmed at the bar of the House of Commons, that Mr. Francis, General Clavering, and Col. Monson had approved of the execution of Nundcomar ; that General Clavering had received a petition from Nundcomar to apply for mercy ; that he reserved it till after his execution ; that he then produced it to the Council, and that Mr. Francis moved to have it burnt as a libel by the hands of the common hangman. Hence Sir Elijah would have the House of Commons to infer, that Mr. Francis approved of the execution of Nundcomar ; Mr. Francis, on the contrary, declared that he made this motion, in order to get the paper destroyed, because it contained much invective against Sir Elijah Impey, and he was afraid that it might have ex-

posed General Clavering to his resentment ; that Sir Elijah Impey did then consider Mr. Francis, General Clavering, and Colonel Monson as his greatest enemies, and that in a letter written to the Secretary of State,* at the very time when he states that they approved of his conduct, he complained bitterly of their persecution, and of the obloquy which they threw upon him in consequence of the trial.

Would any other judge have pursued a similar conduct ? Would any other judge have condemned to death upon a statute, the legality of admitting which his colleague absolutely denied ? Would any other judge have brow-beat evidence, overlooked perjury, and suppressed points of law ? Would any other judge, (and a judge is considered by the law as counsel for the accused) have himself reviled his advocate, and rebuked him for discharging the common offices of humanity ? When Sir Elijah Impey

* Lord Rochford.—The passage is as follows : “ *I do sincerely attribute the offensive parts of the paragraphs to imaginations heated with party disputes ; and entertain so high a sense of the honour of the gentlemen, that at a period some distance from the events, which shall have given time for their judgements to cool, they will themselves be justified at what they have wrote ; and be willing to retract the charges.*”

did these things, he deviated from the duty of a judge, he deviated from it widely; and if he did deviate from that duty, if he acted as no other judge would have done, if he forgot even all decency upon the occasion, to what can we ascribe partiality so gross but to the most sinister motives? To what can we impute it but to a blind devotion for Mr. Hastings, and a fixed determination to go any length in his service?

To conclude. When we review this trial, when we consider the conduct of Sir Elijah Impey, when we weigh the circumstances which accompanied it, we are compelled to acknowledge the acquittal of the House of Commons—the strongest proof that he did not murder Nundcomar.

Such was the fate of Mr. Hastings, and such of Sir Elijah Impey. But what opinion shall we entertain of the conduct of the House of Commons in these prosecutions? Are we to consider them as the punishers of guilt, as the avengers of injustice? Are we to applaud them for redressing the wrongs of India? Alas! we find them chastising avarice and winking at cruelty, punishing robbery, and sparing murder, pursuing crimes, and overlooking enormities!

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The DECLARATORY BILL.

The part which the French had taken in the commotions of Holland, towards the close of the year 1787, had rendered a rupture with that nation possible. In this situation of affairs, his Majesty's Ministers conceived the design of sending out four regiments to India, in order to secure our possessions in that quarter. Peace was soon after restored throughout Europe. Ministers, however, persisted in their intention of sending out the regiments. Acting, therefore, in the capacity of Commissioners for India, they ordered the troops to be raised, transported, and paid out of the revenues of the Company. The Directors remonstrated against the injustice of the measure; they contended that the danger was past, that the exigency which called for the exertions of the Company had subsided, and that the Company could not be compelled to maintain any troops, except what were sent out at their own immediate requisition. The Board of Controul insisted, that they were liable by the act of 1784; the Directors denied it. The Board then applied to Parliament for an explanation of the act, and the following motion was made in the House of Commons :

“ That

“ That leave be given to bring in a bill, for
 “ removing any doubts respecting the powers
 “ of the Commissioners for the affairs of India,
 “ to direct, that the expence of raising, tran-
 “ sporting, and maintaining such troops, as
 “ may be judged necessary for the security of
 “ the British possessions in the East Indies,
 “ should be defrayed out of the revenues ari-
 “ sing from the said territories and possessions.”

A bill was brought in accordingly to explain the act of 1784. It declared, that the Board of Controul had unlimited power over the revenues of India, and that they might apply them in whatever manner they pleased. They might raise armies, appoint salaries, and give presents. They were omnipotent. The country gentlemen * took the alarm: they protested that they had not so understood the act of 1784; that they had conceived patronage to remain untouched; that they never would have supported it, if they had understood it as construed by the Declaratory Bill; that a Minister might perhaps make a good, perhaps a bad use of patronage; the best way was not to trust him.†

* Mr. Powis, Mr. Bastard, Mr. Pulteney, and others.

† These were almost their very words.

Mr. Pitt then defended himself. He disclaimed all sinister views; he warned Parliament to beware of prerogative; he cautioned them against the influence of the Crown, offered an amendment of the Mutiny Bill, declared him his best friend who would controul him; and the day after moved restricting clauses upon his own bill.

This is a literal history of the fact. What commentary are we to make upon it? What conclusion are we to draw from it? Are we to give the Minister credit for candour in acknowledging his errors, or for generosity in renouncing them? Are we to consider his conduct as an effusion of patriotism, or an artifice of policy?

Let us judge impartially. It is very evident that the act of 1784 did not go the length of the Declaratory Bill, before that bill was restricted. The country gentlemen who supported the former, were of that opinion. Ministers, however, maintained that it did. Mr. Pitt declared, he had ever understood “ *that the Board of Controul had power over the revenues of India.*” If he understood so, he understood that they possessed much patronage. Why then did

did he conceal that patronage in 1784? Why did he tell the country, that his bill did not assume it?

One thing is certain, that the powers conferred upon the Board of Controul by the Declaratory Bill, were too extensive, nor could the country gentlemen be appeased, till they were circumscribed. But if these powers were really dangerous, why did not the Minister discover their tendency sooner? Why did he not foresee their consequences earlier; and he ought to have foreseen them the earlier that they were the fruits of his own bill? Why did he wait till his caution was awakened, till his patriotism was alarmed by the voice of the country interest?

The truth is, that no bill ever deserved better the appellation of Declaratory: it construed the act of 1784 in the clearest manner; it declared the designs of its authors; it demonstrated that the patronage, which had been reprobated as so dangerous, the power which had been deprecated as so formidable, was actually possessed by the Board of Controul. Did not the restricting clauses tie up the Commissioners from levying

above a certain number of troops,* from augmenting salaries, and from conferring rewards? Will it be said, that before the clauses the Board could not have raised any men, bestowed any rewards, and lavished any emoluments? or will it be pretended, that these authorities did not imply power? All was artifice from the beginning. The Declaratory Bill confessed, what the act of 1784 durst not avow. But the fraud was now detected; and when it was detected, its authors were glad to accept of any terms, to admit of any compromise.

If these things have been stated with candour, and it is impossible to represent them more fairly, we cannot reflect upon the conduct of Ministers without surprise. Do we not remember how vehemently they declaimed against Mr. Fox's India Bill? How bitterly they reprobated the tyranny of powers established, the outrage of rights invaded, the perfidy of charters overthrown? They ought to have forborne reproaches. They did not content themselves with annulling the Charter of the Company,

* By the restricting clauses, the Board of Controul was tied up from sending above twenty thousand men to India in any one year.

nor assuming power, but they annulled the one, and assumed the other, without responsibility. They converted patronage into corruption, and power into tyranny.

The R E G E N C Y B I L L.

It is of the highest importance, that the people should have a general notion of their rights. They have no occasion to enter into speculative disputes upon government, but they are called upon to understand every question that immediately affects their liberties. And the better they do understand such questions, the more likely they will be to preserve and cherish that spirit of freedom, which has enabled them hitherto to maintain the Constitution.

If ever a question occurred which concerned the people, it was that of the Regency. It comprehended the most sacred of their rights, and involved the very essence of the Constitution. It was a question, so infinite in magnitude, so important in discussion, and so fatal in consequence, that at this distance of time, it is difficult to determine whether it was fortunate or unfortunate, that it was not better known.

That all government was instituted for the happiness of the people, is a principle universally allowed. The idea of divine right is now exploded, and none are silly or superstitious enough to believe, that one man is entitled to make all men miserable. There is an original compact between the governing and the governed. The many gave up their freedom for the sake of the benefits which they derived from subjection, and the few agreed to govern them for the sake of the consideration, which power bestows; but they agreed to govern according to certain rules or laws. Upon these terms they accepted their authority, and whenever they abuse it, the condition is forfeited, the compact is dissolved, and both parties return to the state in which they were before any agreement was made.

Upon this principle all government is founded. Every other idea of it takes its rise in absurdity and nonsense. And as the people instituted government for their own happiness, so they parted with their power for the same ends. They disposed of that power differently in different countries; in England they vested it in King, Lords, and Commons. King, Lords, and Commons, can do most things; any two of them nothing.

Such

Such was the form of our government, when one of the estates failed. His Majesty became incapable of discharging the functions of his office, and the remaining branches of the legislature were reduced to a state of political impotence. Impotent, however, as they were, they undertook to change the nature of the English monarchy, and to render it elective. The people had declared it hereditary at the Revolution,* and every principle of succession which applied to decessé, applied equally to an absolute incapacity to govern. Whether they intended to avoid the confusion inseparable from elective monarchies, or meant that power should follow dignity of blood, the claim of the Prince of Wales was equally *irrefragable*.† It was not, however, declared by an express statute, and therefore the Lords and Commons refused to acknowledge it. They would not presume to guess the intentions of the people, or to expound the Constitution. Their respect for their rights rose to a superstitious reverence. We naturally expect that in the first transports of their devo-

* By the representatives chosen for the purpose of settling the government.

† Even those who denied that the Prince of Wales had a *right*, allowed that he had an *irrefragable* claim to the Regency.

tion, they would have dissolved themselves (as they were indeed virtually dissolved by his Majesty's incapacity) that they would have asked that opinion which they would not venture to anticipate, and that they would have suffered the people to return representatives for the purpose of chusing a Regent, as was done for chusing a King at the Revolution.* The measure it is true was nugatory. The claim of the Prince of Wales was so *irrefragable*, that if he had been nominated Regent with full authority, the nation neither could nor would have murmured. Nugatory, however, as it was, the Lords and Commons must have taken it, if they had acted consistently with their own principles. By rejecting the spirit, they bound themselves to adhere to the letter of the Constitution.

The Lords and Commons had more enlarged views. They were determined to change the nature of our monarchy, whatever it might cost them. To qualify themselves for the office they were obliged to assert, that they represented the people *fully*, though they represented them for no one purpose of legislation whatever,

* The writs then issued specified the purpose of the election.

and they asserted it roundly.* It would be unjust to impeach their veracity ; the assertion was inevitable. They then appointed a Regent, and limited his authority.

The reasons which were offered in justification of this conduct, either did not apply at all, or were totally void of foundation. His Majesty, it was said, was still living, his incapacity was only temporary, and if the authority of the Regent was not restricted, he would experience a difficulty of recovering his authority. His Majesty had an undoubted title to wear the Crown while he lived, and if his incapacity was only temporary, it was a good reason why the power of the Regent should be temporary also, but none why the Lords and Commons should assume powers which had never been delegated by the people. With respect to the restoration of the royal authority, the justice of the kingdom insured it to His Majesty as soon as he was capable of exercising it.

It seemed not, however, the practice to reason in the late question so much, as to invert the operations of the understanding. To assert

* See their Resolution. The words are “ *representing the people fully and freely.*”

the claim of the Prince of Wales was to revive the doctrine of Divine Right. If divine right means any thing, it means that claim which a sovereign or his descendants set up to the crown, after they have forfeited all title to govern by breaking their compact with the people. We will now ask, how his Royal Highness had either forfeited himself, or his ancestors for him? If the idea of divine right applied at all, it tended rather to fix the royal authority with his Majesty, and to shew that notwithstanding his inability to govern, it was inseparably attached to his person.

On the other hand, the Lords and Commons pretended that they asserted the rights of the people. How they asserted these rights, cannot easily be discovered, unless to constitute two branches of the legislature supreme, to destroy the independence of the estates, to mutilate the prerogative, in short, to overturn every barrier which the people have raised for their security, be to defend their liberties!

One word more. The authority of the Regent was restricted professedly lest his Majesty, on his recovery, might censure the manner in which that authority had been exercised. Ministers

ministers considered this as their strongest ground, and when they were pressed, they constantly retired to it. If the executive power contributes, as it certainly does, to the good government of the country, to cripple it from such considerations, was to sacrifice the happiness of the people to the personal gratification of the sovereign. When we reflect that this principle is the very essence of Jacobitism, we cannot help admiring the modesty with which Ministers arrogated the merit of Whigs, and reproached their adversaries as Tories.

To conclude. If the Lords and Commons asserted the rights of the people on this occasion, they asserted them upon similar principles with James the Second. Like James they called themselves a legislature; like James they call themselves supreme; like James they suspended the Constitution, and if their conduct had been attended with effects equally felt by the people, perhaps it would have been followed by the same consequences.

WE have now travelled through the measures of the Parliament of 1784. We have examined

L
amined

amined them with attention, and traced their principles, as far we were capable of understanding them. In some we find precipitation, as in the Irish Propositions, and the Commercial Treaty; in others, duplicity, as in the India, the Declaratory Bill, and the Impeachments; in others oppression, as in the Commutation and Shop Tax; in others contempt of the Constitution, as in the Westminster Scrutiny and Regency Bill. It is not easy to say what merits can compensate for such defects. Folly is generally the companion of precipitation, and though duplicity may be an accomplishment in a Grand Vizir, it is a bad qualification in an English Minister. As to the Constitution, Lord Bolingbroke said very truly, that the preservation of it implies every virtue, and the invasion of it every crime.

Nor have Ministers contented themselves with attacking the liberties of the people. Their most favorite opinions have been repeatedly shocked, and offended. They respected the rights of election; they were invaded by the Westminster Scrutiny: they loved juries; they were attacked by the India Bill: they hated the French as their natural enemies; they were united with them by the Commercial Treaty: they

they revered the majesty of the people, and that majesty was insulted by the Regency Bill.

We now take farewell of these measures. Would to heaven that the discussion of them may serve any useful purpose ! Would to heaven that it may induce the people to examine these measures themselves ! Why should not they ? Let them study their own liberties.—Let them see how their rights have been maintained.—Let them know who are their enemies, for the moment approaches when they will be called upon to chuse their friends.

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